



# Notary: Mediator in Mediation of Land Dispute of the Parties in the Deed

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**Abstract.** Notaries must be fair and impartial when offering services to the community, avoiding status and class discrimination. In practice, there are also notaries who serve as mediators for deed dispute mediation. The notary is morally obligated to resolve problems relating to the document they drew up. It is possible for the notary to become the mediator of the parties in the deed in the context of land conflicts, such as in the sale and purchase transaction. The employed research method is a normative legal research method that combines the statutory and conceptual approaches. Notary as a mediator is conducted in line with the provisions of Law No. 2 of 2014 about the Notary Profession and the legal foundation of Notaries as legal counselors. The mediation phase is also conducted in accordance with the rules outlined in Supreme Court Regulation No. 1 of 2016 on Mediation Procedures, which also authorizes the mediator to assist the parties in resolving their disagreement through mediation outside of court. The choosing of a notary as a mediator is the desire of the parties who request the services of a notary to mediate, as the notary is a person in whom the parties place their trust due to all the benefits he possesses. In the land dispute mediation process including the parties in the deed he drew up, the Notary's function as a mediator is to ensure the object of the conflict and the truth of the object of dispute in accordance with the deed he drew up, while the parties themselves determine the peace.

**Keywords:** Notary · Mediation · Land Dispute

## 1 Introduction

Various actions have been taken by the government to settle land dispute in order to avoid the accumulation of land disputes, which can harm the community bear in mind that the land cannot be used because it is in dispute. Basically, there are 2 (two) types of dispute resolution processes can be taken. The dispute resolution process through litigation can be carried out in the court and the non-litigation process through the cooperative mechanism can be carried out outside the courtroom.

The litigation process typically results in an adversarial agreement that has not been able to embrace common interests, tends to generate new issues, and is time-consuming to resolve. In contrast, an out-of-court process results in an agreement that embraces a "win-win solution," is comprehensively based on cooperation, and preserves good ties.

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The alternative of settling land disputes through conversations (mediation) provides advantages over court settlements, which are time-consuming, costly, and energy-intensive. This technique is consistent with the nature of the Indonesian people, who consistently resolve issues via discourse and consensus. In addition, the mistrust of the judicial system by some individuals and the administrative restrictions that surround it make the courts the last resort for dispute settlement.

The parties conduct mediation with the assistance of a mediator who operates in a neutral and impartial manner. The mediator will explain the dispute as a neutral third party. Therefore, the function of mediator is necessary for the successful resolution of a conflict between two parties.

Mediation is recognized as one of the tools for resolving land disputes. According to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolutions (hereafter ADR Law), the purpose of mediation is to resolve any dispute between parties by involving a mutually chosen unbiased and neutral third party. A mediator will assist them in negotiating their differences so that the conflict can be resolved peacefully. In this technique, both parties are on an equal footing, thus the mediator assists them in reaching a mutually agreeable resolution to their conflict. Any agreement is memorialized in a legally binding contract.

In a mediation procedure, the disputing parties are proactive and have complete influence over decisions. The mediator does not have the authority to make decisions; he or she merely supports the parties in sustaining the mediation process so that the conflict might be resolved amicably. Land has been considered an asset for humans since they require a piece of land from the time they are living till the time they die. The land conflict in Indonesia occurs in numerous ways [3]. The number of land disputes that arise cannot be separated from the agreement made by the parties. Usually, the most common cases are breach of contract, the incomplete due diligence of the land objects that are traded and/or agreed upon, etc.

Typically, a public official, namely a notary, executes the agreement-making procedure. Notary is a public official with the authority to authenticate a document, as well as additional authorities as outlined in Law No. 2 of 2014 amending Law No. 30 of 2004 on the Notary Profession (hereinafter Notary Profession Law). Notaries receive attribution authority from the state under the Notary Profession Law in order to carry out some of the state's responsibilities to provide legal services to the public in the civil sector in order to realize community legal certainty, as specified in the original deed.

In delivering legal services to the society, the notary shall be objective and impartial, without regard to status or social standing. In some instances, notaries also serve as mediators during the deed dispute mediation procedure. Morally, the notary is obligated to resolve disputes relating to the document he drew. It is intended to prevent the accumulation of cases in court, and neither the Notary Profession Law nor the Notary Code of Ethics contain particular regulations on acting as a mediator. In the context of property disputes, the notary who mediates the parties in the deed, such as in the deed of sale and purchase of land, might serve as a mediator. In addition, if the notary mediates the dispute between the parties, it will be simpler for the notary to identify ways and answers to difficulties that arise between the parties.

## 2 Method

This study was normative legal research that utilized two approaches: the statutory approach and the conceptual approach. Statutory method undertaken by studying the stipulations of the Notary Profession Law and the ADR Law pertaining to the duties and powers of the notary and its position as a mediator. The conceptual approach, however, concentrated on the concept of law, legal theory, and legal principles. In relation to the power of a notary and efforts to resolve disputes through mediation, there are also legal notions, legal theories, and legal principles (non-litigation). The legal materials were evaluated utilizing descriptive analytic techniques, in which the data analysis was conducted within the scope of the problem and in accordance with general theories and notions.

All obtained legal materials are first processed to obtain a picture that meets their needs, then analyzed using qualitative analysis, primary legal materials, secondary legal materials, and tertiary legal materials are collected, and then it is determined which data are important and which data are not important. Finally, a conclusion is drawn to provide a solution to the problem.

## 3 Result and Discussion

### 3.1 The Regulation Concerning Notary as Mediator in Land Dispute Settlement Between Parties

Notary shall be professional in carrying out his duties and authorities by having high moral integrity, performing office duties in accordance with local wisdom, upholding religious values and speaking well and politely, being honest with themselves and others, does not prioritize personal gain, prioritizes service supported by expertise, does not discriminate against clients, and always adheres to the notary association's code of ethics. [6] Furthermore, the mediation arrangements and mediators are tailored to the interests of the opposing parties. According to Article 17 of the Notary Profession Law, there is no particular legislation prohibiting a notary from acting as a mediator, as the mediator is not a state official nor a high-ranking state institution and does not administer state affairs. [7].

However, if a notary acts as a mediator who facilitates the mediation process for notarial disputes with a settlement deed, the notary cannot be held legally liable because the mediator is not a party, but a neutral, impartial third party who plays a role in assisting the mediation process for resolving disputes between the parties who cannot be held liable, bearing in mind that the entire outcome of the mediation is determined by the disputing parties.

The Notary Profession Law grants notaries the authority to carry out some of the state's responsibilities to provide legal services to the public. The legal service can be rendered by giving the client with clear information. A notary must be able to explain the terms in the deeds he drafts, keeping in mind that not everyone who appears before him will fully comprehend the clauses.

Article 15 of the Notary Profession Law specifies the authority of notaries. In addition, Article 15 paragraph 2 point e states that the Notary is permitted to offer legal advice

about the creation of the deed/acta. [8] If the community requests legal advice, the Notary must give appropriate legal services and deliver accurate information in compliance with the law.

The government has appointed the notary as a public official; therefore, they are obligated to serve the community's demand for legitimate proof that offers certainty in the area of civil law. [9] In daily life, there are a number of instances in which a notary, as part of his duties, attempts to mediate conflicts between parties to a deed. It also authorizes mediators to assist parties in resolving their issues through mediation outside of court. [10].

### **3.2 The Role of Notary as Mediator in Land Dispute Between Parties in the Deed**

The authority of the notary to create all agreements, deeds, and forms of legitimate deeds sought by the disputing parties is central to the notary's function in supporting the parties in resolving their disagreement. [11] Therefore, the Notary bears moral responsibility for the document he drew up if a dispute arises between the parties to the document he drew up. As a mediator in the settlement of land disputes, the notary is obligated to explain the real legal position in accordance with the law, as well as each party's rights and responsibilities. It seeks to achieve a high and accurate level of legal awareness in the community, to be truthful, neutral, impartial, and to have a strong feeling of responsibility.

Essentially, the disputing parties have the choice to select the applicable legislation and venue for resolving their disagreement. [12] In this situation, the Notary can only function as a third party; therefore, the Notary must be neutral and unbiased when delivering legal services to the community, avoiding status and class discrimination. The Notary has the authority to provide legal guidance regarding the creation of the deed/acta, but no decision-making authority. The selection of a notary as a mediator is the desire of the parties that request the services of a notary as a mediator; nevertheless, keep in mind that the notary is a trusted individual with all the benefits he possesses.

As a mediator, a Notary could only serve as a mediator's facilitator. It is conducted in the spirit of amicably resolving the conflict. In addition, any agreement is memorialized in a legally binding contract by the Notary who acts as mediator. The disputing parties are free to accept or reject the outcome of the mediation process, but keep in mind that they have the most decision-making authority during the mediation process [13]. Typically, the parties have the right to select a notary as a mediator to resolve the dispute [14], and they approach the notary to inquire about his readiness to do so. The agreement is the result of a compromise or "win-win solution" that was jointly chosen and agreed upon for the greater good [15]. As long as the notary is able to effectively manage his or her time and delegate tasks to his or her office staff, acting as a mediator does not interfere with the notary's ability to perform his duties as a notary. A notary's role as a mediator does not need much time and is only temporary; when the mediation process concludes, so do his responsibilities as a mediator. Therefore, it does not conflict with the position and profession of a notary, as the notary's performance and method for managing the execution of his position are dictated by his time management skills.

In the land dispute mediation process, the Notary's job as a mediator is to ensure the object of the disagreement and the veracity of the object of the conflict. In addition to

providing its own knowledge to the Notary regarding the subject of the dispute, which can be utilized as a factor in the party's mediation, the third party provides the Notary with its own knowledge regarding the subject of the disagreement.

## 4 Conclusion

In accordance with the terms of the Notary Profession Law, the notary was appointed as a mediator to help the parties in resolving their land issues in the deed he drafted. It is also consistent with the Notary's legal foundation as legal counsel. According to Article 15 paragraph 2 point e of the Notary Profession Law, notaries have the authority to render legal advice. Regarding the Notary's position as mediator, it is common knowledge that the mediation mechanism is carried out in accordance with the protocol outlined in Supreme Court Regulation No. 1 of 2016 on Mediation Procedures. In addition, it authorizes the mediator to help the parties in resolving their issue through mediation outside of the courts.

The notary's function as a mediator in the resolution of the parties' land disputes is reflected in the deed he drafts by offering an explanation of the real legal situation in accordance with the rules of the law and describing the rights and obligations of each party. It is undertaken with honesty, objectivity, and a strong feeling of responsibility in order to achieve a high level of right legal knowledge in the community. In addition, the Notary shall serve as a neutral and impartial third party. It is conducted in the spirit of amicably resolving the conflict. In addition, any agreement is memorialized in a legally binding contract by the Notary who acts as mediator. Therefore, the Notary lacks the authority to settle the dispute.

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